



- (3) Did claimant provide respondent with timely notice of accident?
- (4) Is claimant entitled to temporary total and temporary partial disability compensation for a 31-week period from November 3, 1998, through June 7, 1999?
- (5) What is the nature and extent of claimant's injury and/or disability?
- (6) Is claimant entitled to the payment of medical bills and medical mileage as authorized medical treatment?
- (7) Is claimant entitled to his full unauthorized medical allowance of \$500?
- (8) Is claimant entitled to future medical benefits for the alleged accidental injuries?
- (9) What is the amount of compensation due claimant?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary file herein, the Appeals Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets forth findings of fact and conclusions of law in some detail. It is not necessary to repeat those herein. The Appeals Board drafts the findings and conclusions of the Administrative Law Judge contained in the Award as its own.

Claimant alleges accidental injury to his low back through a series of accidents beginning in August 1998 and continuing through his last day worked of October 28, 1998, from the heavy lifting and the driving required in his job with respondent. Claimant also alleges a specific incident on October 7, 1998, when he was lifting an extension axle shaft on a combine. Claimant testified that, while lifting the axle shaft which weighed approximately 100 pounds, he suffered an injury to his low back.

Respondent contends claimant did not prove that he suffered accidental injury arising out of and in the course of his employment on the dates alleged. In support, respondent provided the testimony of Terry Mohr, respondent owner, Dorothy Mohr, Terry Mohr's mother, and Judy Twedt, a friend of Dorothy Mohr, all who denied claimant's allegations. Mrs. Mohr and Ms. Twedt testified about conversations with claimant about how he hurt his back lifting a car part out of the bed of his own truck. Mr. Mohr also testified to the truck incident and, in addition, testified that claimant advised him he needed time off work on October 28, 1998, in order to work on his truck. Claimant never returned to respondent's employment after that date.

Respondent also provided to the court a surveillance videotape showing claimant changing a tire, lifting small logs, working on cars, lifting car ramps, working on trucks and doing various physical activities, none of which appear to be in any way limited by claimant's alleged back problems.

The Administrative Law Judge stressed that this case hinged to a great deal upon claimant's credibility. The Administrative Law Judge noted after both the preliminary hearing and regular hearing that she had "serious doubt" as to whether claimant had, in fact, sustained personal injury by accident as he described. The Appeals Board agrees. The record does not support claimant's allegations, and the Board finds that claimant has failed to satisfy his burden that he suffered accidental injury arising out of and in the course of his employment with respondent. The Appeals Board, therefore, finds that the Award of the Administrative Law Judge denying claimant benefits should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Julie A. N. Sample dated April 27, 2000, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Judy Pope Edwards, Topeka, KS  
Jeffrey S. Austin, Overland Park, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director